



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,238	09/17/2003	Eric Kolb	DEP-5156	3713
27777	7590	11/02/2006	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			REIMERS, ANNETTE R	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/664,238	Applicant(s) KOLB ET AL.	
	Examiner Annette R. Reimers	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-30 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-30 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

It is noted that full faith and credit is being given to the action by the previous Examiner in accordance with MPEP 706.04

Claim Rejections - 35 USC § 112

Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 33 depends from a cancelled claim, i.e. 31. For examination purposes, it will be assumed that claim 33 depends from claim 27.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sevrain (US Patent Publication Number 2003/0229348), cited by applicant, in view of Brace et al. (US Patent Number 6,235,033), cited by applicant.

Sevrain teaches various embodiments of a spinal fixation plate with two different sections that mate and each section has a bore formed to receive a bone anchor (see figures 7-10) a bone anchor, e.g. 200, having a proximal head and a distal bone engaging portion, the proximal head having a generally smooth outer surface for mating with the generally smooth radially interior surface of a polyaxial bushing (see figures 8A-

Art Unit: 3733

8B). Sevrain teaches that the two sections can adjust along a longitudinal axis of the plate, wherein the at least one bore of the first section and the at least one bore of the second section are positioned at opposing ends of the spinal fixation plate and the at least one bore of the first section has a first bore axis and the at least one bore of the second section has a second bore axis that intersects the first bore axis on a side of the spinal fixation plate distal to the first and second vertebrae (see figures 7-10). Furthermore, Sevrain teaches a dynamic connection mechanism with a pin (218) and slot (232) (see figures 7-10 and paragraph 0062). Sevrain discloses the claimed invention except a polyaxial bushing. Brace et al. disclose a polyaxial bushing, wherein the bushing has a slot, e.g. 28a, to permit radial expansion of the bushing, and the bushing has a plurality of ridges, 30, formed on a radially outer surface of the bushing and a generally smooth radially interior surface that defines a tapered passage for receiving a bone anchor (see figures 3-5). Brace et al. teach the use of a bushing to provide for proper angulation of the screw relative to the fixation device (see column 1, lines 40-42). Brace et al. further teach the use of ridges on the bushing to further increase the security of the bushing within the hole (see column 2, lines 29-33 and column 3, lines 61-64). It would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Sevrain with a polyaxial bushing, in view of Brace et al., to provide for proper angulation of the screw relative to the fixation device. In addition, it would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Sevrain with a polyaxial bushing having a

Art Unit: 3733

plurality of ridges formed on a radially outer surface of the bushing, in view of Brace et al., to further increase the security of the bushing within the hole.

Response to Arguments

Applicant's arguments with respect to claims 27-30 and 33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

Art Unit: 3733

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER